

CHAP. 26.

AN ACT for the relief of John L. Hardenbergh.

PASSED the 30th of March, 1782.

- Preamble.** WHEREAS the certificates given by the auditors appointed to liquidate and settle the accounts of the troops of this State in the service of the United States to the said John L. Hardenbergh for the depreciation of his pay while in the said service, are alledged to be lost or destroyed
- Auditors to grant other certificates to John L. Hardenbergh.** *Be it therefore enacted by the People of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That it shall and may be lawfull for the said auditors or any two of them, to grant to the said John L. Hardenbergh other certificates for the depreciation of his pay while he served in the regiments of this State in the service of the United States, amounting to the value of the certificates formerly given to him at the time they were made, and bearing interest on that amount; on the said John L. Hardenbergh with two sufficient freeholders as his sureties having first sealed and delivered in the presence of three witnesses, of which at least one of the said auditors to be one, a joint and several bond to the treasurer of this
- Bond to be given.** State in treble the amount of the said certificate, with condition, that the said John L. Hardenbergh his heirs executors or administrators shall and will save harmless and keep indemnified the people of the State of New York from any costs charge claim payment or demand, or the location of any lands tenements or real estate, for by reason or on account of the said certificates which are alledged to be lost or destroyed.
- Condition.** *And be it further enacted by the authority aforesaid* That the said auditors who may subscribe the certificates to be given to the said John L. Hardenbergh in pursuance of this act, shall before they deliver the said certificates last mentioned to the said John L. Hardenbergh, or to any other person for his use, make such memorandum as they shall think proper on the margin remaining in the book from whence the certificates alledged to be lost were indented and taken out, and also on the margin from whence the certificates to be given in pursuance of this act shall be taken out, purporting that the last mentioned certificates are given in lieu of those alledged to be lost or destroyed; and shall also indorse on each certificate to be given in pursuance of this act, a memorandum, that the same is or are given in lieu of those alledged to be lost or destroyed, specifying in such memorandum the number and amount in value of the certificates alledged to be lost or destroyed.
- Entry to be made on margin remaining in book.**

CHAP. 27.

AN ACT to regulate the militia.

PASSED the 4th of April, 1782.

- Preamble.** WHEREAS it is necessary to put the militia on such an establishment as will most effectually encourage a martial spirit among the people, provide for the internal and external security of the State and enable it most vigorously to co-operate with the other United States in a cause no less noble and exalted than the defence of the common rights and liberties of America against hostile tyranny and oppression.

1. Be it therefore enacted by the People of the State of New York represented in Senate and Assembly and it is hereby enacted by the authority of the same That every able bodied male person (Indians and slaves excepted) residing within this State from sixteen years of age to fifty (except such persons as are hereinafter excepted) shall immediately after the passing of this act, unless he shall have been heretofore enrolled by the captain or in his absence the next commanding officer of the beat wherein he shall reside, be enrolled in the company of such beat. That every captain or commanding officer of a company shall also enroll every person who shall from time to time arrive at the age of sixteen years or come to reside or sojourn within his beat and without delay notify such enrollment to each person so enrolled by some inferior officer of the company who on oath shall be a competent witness to prove such notice. That if any dispute shall arise with respect to the age or ability to bear arms of any person, it shall be determined by the colonel or commanding officer of the regiment whose determination in the case shall be final. That every person so enrolled and notified shall within twenty days thereafter furnish and provide himself at his own expence with a good musket or firelock fit for service, a sufficient bayonet (unless he shall be provided with a good rifle) with a good belt or pouch or cartouch box containing not less than sixteen cartridges suited to the bore of the musket or firelock, each cartridge containing a proper quantity of powder and ball or in lieu of such pouch cartouch box or cartridges, with a quantity of powder and ball respectively disposed of in a powder horn and shot bag, and wadding sufficient for the same and two spare flints, a blanket and knapsack; and shall appear so armed, accoutred and provided, when called out to exercise, or duty, as herein after directed; except that when called out to exercise only, he may appear without blanket or knapsack; and if any such person shall appear to the captain or commanding officer of the company to be too indigent to arm, accouter and provide himself in manner aforesaid, he shall be furnished with arms and accoutrements out of the monies to arise from such fines as shall from time to time accrue in the regiment to which he shall belong, and in case of deficiency thereof, out of the public magazines or stores of this State, by order of the person so administering the government of this State for the time being.

Persons to be enrolled

Commanding officer to determine disputes.

Person enrolled to provide himself with equipments etc., and appear with same when called out.

II. That the commander in chief for the time being shall by general orders arrange the militia of this State into brigades, regiments, and companies, and by and with the advice and consent of the council of appointment, appoint such and so many brigadiers general and other officers as he shall think most conducive to the public service; copies of such general orders to be filed in the office of the clerk of the county where the regiment, or company shall be.

Commander in chief to arrange militia into brigades, etc.

III. That each brigadier general shall have one brigade major of his own choice, to rank as major in the militia and receive pay on the certificate of his brigadier for the time he shall be in service.

Brigade major.

IV. That in case of the death, resignation or other inability to serve of any colonel now commanding a regiment, no colonel shall thereafter be appointed thereto, but that such regiment and all others not now commanded by a colonel shall henceforth be commanded by a lieutenant colonel.—That each regiment shall have one major (unless in cases where it shall be thought necessary to appoint two majors— That each company shall be officered with one captain, one first lieutenant, one second lieutenant and one ensign, as commissioned officers (That in case of the death, resignation or other inability to serve of any second lieutenant it shall be in the discretion of the governor by and with the

Commandants of regiments.

Company officers.

- advice and consent of the council of appointment to appoint another or not) and by four serjeants, four corporals one drummer and one fifer— And the staff of each regiment shall be, one adjutant and one quarter master who shall respectively rank as first lieutenants, and the serjeants, corporals, drummers and fifers, shall be appointed from time to time by the captains or other commanding officers of the several companies; and if any non commissioned officer so to be appointed shall refuse to accept the office to which he shall be appointed he shall forfeit the sum of forty shillings, to be adjudged levied and disposed of, in manner as is herein after directed with respect to fines for neglecting or refusing to appear to train and exercise as is herein after mentioned.
- Regimental staff.** V. That each regiment shall be provided with a standard of colours at the expence of the field officers, and each company with a drum and fife at the expence of the commissioned officers thereof—
- Colors, drum and fife.** VI. That there may be a troop of horse in each brigade and two troops of horse in the county of Westchester and a company of grenadiers in each regiment of foot which may conveniently furnish the same—
- Troops of horse and grenadiers.** That the said troops of horse and companies of grenadiers shall respectively, be formed and composed of volunteers in the respective brigades and regiments residing at such convenient distances from each other that they may with ease and dispatch be called out for training, discipline or other service. Provided that no troop of horse shall be established without the consent of the brigadier or commanding officer of the brigade; and that no grenadier company shall be established in any regiment without the consent of all the field officers; and that no troop of horse or grenadier company shall exceed fifty men officers included; and that no person shall hereafter enlist in any troop of horse or grenadier company without the consent of the commanding officer of the regiment in which he shall reside.—
- Of whom to be composed.** VII. That on every such enlistment of a volunteer the captain of a troop of horse or company of grenadiers do immediately certify to the captain of the beat from which such volunteer shall enlist, the enlistment of the said volunteer.—
- Enlistments to be certified.** VIII. That each trooper shall be equipped and provided with a good serviceable horse at least fourteen hands high, a good saddle, housing, holsters, breast plate and crupper, a case of good pistols, a good horseman's sword, a pair of boots and spurs, and a carbine well fixed with a good belt, swivel and bucket, and a cartridge box to contain twelve cartridges at least; and that each grenadier shall be equiped and provided with a grenadier's cap, a good musket and bayonet, a broad sword, a belt and pouch or cartridge box, and so equipped and provided the troopers and grenadiers shall respectively be called out under the direction of their respective officers as is hereby required with respect to the rest of the militia.
- Equipement of troopers and grenadiers.** IX. That each colonel or commanding officer of a regiment shall in the months of May and October in every year, call out his regiment to his regimental parade, (which shall be the place in the district of the regiment the most convenient for that purpose,) and having paraded the same, shall require from the captain or commanding officer of every beat in the regiment a return thereof, expressing the exempts and the absentees, and the causes of the respective exemptions and absences; cause the said regiment, except the exempts then paraded, to be called by the company rolls; and the arms, ammunition and accoutrements of each man to be examined, and the defaulters to be noted, and shall cause them to be sufficiently exercised, trained and disciplined; and shall within two weeks there after make or cause to be made a true regimental
- Proviso as to consent of brigadier, etc.**
- To be called out.**
- Regimental parades.**

return (excepting therein by name the exempts or absentees) to the brigadier general or commanding officer of the brigade — That the captain or commanding officer of each company shall and may call out his company to such place within his beat as shall be most convenient for that purpose at least four times in every year, and shall cause them when so called out to be well and sufficiently exercised, trained and disciplined.

Company
parades.

X. That every commissioned officer of the militia in this State who shall omit or neglect to perform any of the duties by this act enjoined on him, of enrolling training or disciplining in and to the use of arms the militia of this State, or of making perfect returns of the militia, or of not calling out to actual service the militia or any part thereof when necessary, and shall, if under the rank of a brigadier be thereof convicted by a brigade court martial from the brigade to which he shall belong, consisting of at least thirteen members (which court martial the brigadier is hereby authorized and required to appoint and direct to sit) and the sentence thereon be confirmed by the brigadier general or the officer commanding the said brigade with the right of appeal to the commander in chief to whom the proceedings shall be immediately reported. Be *ipso facto* removed from his office and reduced to do duty in the ranks as a foot soldier; any exemption from duty to the contrary in any wise notwithstanding. And all brigadiers general, for offences, not particularly provided for in this act, shall be tried by a general court martial to be appointed by the commander in chief; and if on conviction the sentence thereof be confirmed by the commander in chief, that there upon such brigadier general shall be removed from his office.—That all sentences of courts-martial so confirmed shall be by the commander in chief from time to time, laid before the council of appointment, to the end, that the person administering the government of this State for the time being by and with their advice and consent may appoint others instead of the officers so found guilty.

Officers
neglecting
to perform
duty to be
tried by
court
martial,
etc.

Sentence
to be laid
before
council of
appoint-
ment.

XI. That every commissioned officer of the militia of this State, who shall be cashiered, or who shall resign his commission, not being superseded in rank in the company to which he belongs, or being a major, or captain, not being superseded in the regiment to which he belongs, or commanding a regiment not being superseded in the brigade to which he belongs or unless his resignation shall be accepted by the governor by and with the consent of the council of appointment, shall be obliged to do the duty of, and in every respect, be put on a footing with a private soldier, any thing contained in this act, to the contrary thereof notwithstanding.

Officers
cashiered,
etc., to do
duty as
private
soldiers.

XII. That every non commissioned officer or private of the said militia who shall neglect to appear when called out to train or parade as herein before mentioned, without sufficient excuse, shall for every such offence forfeit the sum of ten shillings; and if he shall appear wanting any of his arms, ammunition, or accoutrements prescribed for him by this act, without sufficient excuse, he shall for every deficiency forfeit the sum of two shillings—and if any non commissioned officer or private in any troop of horse, or company of grenadiers, shall be charged with either of the said offences and shall not have sufficient excuse, he shall forfeit for the offence of not appearing the sum of twenty shillings—and for every other of the said offences the sum of four shillings.—

Non-com-
missioned
officers,
and pri-
vates to
forfeit
sum
named in
case of
neglect,
etc.

XIII. That all fines to arise from offences in a company only when called out to train or parade shall be adjudged of, and inflicted by the commissioned officers of such company, or the major part thereof, and shall be levied with costs, by warrant under the hand and seal of the

Fines, how
inflicted
and levied.

Fines, how
to be ad-
judged of
and col-
lected.

captain or commanding officer, directed to one or more of the serjeants of the company, by distress and sale of the goods and chattles of the offender and paid by the serjeant or serjeants to the said commanding officer of the company; and that all fines to arise from the like offences, upon the calling out of the regiment, shall be adjudged of and inflicted by the field officers of the regiment, or the major part of them, and shall be levied with costs, by warrant under the hand and seal of the commanding officer of the regiment, directed to one or more of the serjeants of the said regiment, by distress and sale of the goods and chattels of the offenders respectively, and by him or them paid to the said commanding officer; all which fines shall by the commanding officer of the regiment, or of the companies, be paid over to the quarter master of the said regiment, to be by him laid out under the direction of the field officers of the regiment, or the major part thereof, for arming, accoutring and furnishing with ammunition, the privates thereof, in manner aforesaid; and where, in any case, no goods or chattels shall be found, then on such warrants to be issued in either of the cases above mentioned, the serjeant or serjeants shall take the body of the offender and him convey to the common gaol of the county; and if there shall not be a common gaol in the county then to the common gaol in an adjoining county there to be kept in safe and close custody, until he pay the fine with costs, and the gaoler of such gaol is hereby required and commanded to receive such offender with the warrant and him safely keep until he shall have paid his said fine and costs, or shall be discharged by the commanding officer of the regiment to which he doth belong, which gaoler shall after receiving the said fine and costs, on demand by such serjeant or serjeants pay the same to him or them; and thereupon such fine shall be disposed of in manner herein before directed for the disposal of fines.

Official
rank.

XIV. That all officers in the militia shall take rank according to the dates of their commissions, provided that where any officer now holds the same office in the militia which he held under the late government before the revolution, or under the convention before the present government, and since hath received a new commission for the same office, such officer shall take rank from the date of his former, and not from the date of his last commission, any thing herein contained to the contrary notwithstanding.

Returns to
be made to
the com-
mander in
chief.

XV. That from all returns to be made by the commanding officers of regiments respectively to the respective brigadiers general, or commanding officers of the brigade; brigade returns shall without delay be made to the commander in chief, that the commanding officers of regiments not formed into brigades shall without delay make returns to the commander in chief.

Brigades,
etc., how
to rank and
be posted
in line.

XVI. That one brigade, regiment, or company of foot (except grenadiers who shall form on the right of the regiment) shall not be considered as older, or having rank or preference of the other; but each brigade, regiment or company shall be posted and disposed of in the line, on command as the commanding officer on the spot, shall on every occasion or emergency think proper. —

Militia to
be drawn
out in cases
of emer-
gency

XVII. That on every emergency of a sudden actual or threatened invasion by the enemy, or any insurrection, the commanding officer of any brigade, regiment or company, as the case may require, shall immediately draw out the militia under his command, and with them march to any place, whether within or without the State, to oppose the enemy, or to quell insurrections within the State; and that all brigades, regiments, troops and companies, shall from time to time be subject to gene-

ral, brigade, regimental and company orders, as is usual according to the course and practice of war, for suddenly taking the field for the purpose aforesaid — And all such orders by any officer under the rank of commander in chief, shall be reported in writing by express to the commanding officer of the regiment, if given by one under his command, and if given by the commanding officer of the regiment shall be reported to the brigadier general; and if given by the brigadier general, to the commander in chief; all which reports shall be acted upon by the respective persons to whom the same shall respectively be made, as the emergency may require, and by such persons respectively, be reported with their respective proceedings thereon to their next superior officer; and so on in succession till they reach the commander in chief.

Orders to be reported by express to commanding officer.

XVIII. That every person in the militia whether officer or private, when called out into actual service, either to act separately or in conjunction with the troops of the United States of America, shall from the time of his marching out into the said service until he be properly discharged therefrom, be allowed pay and rations according to the Continental establishment; and having marched out in such service, and before his proper discharge or dismissal shall commit any offence or shall before such discharge or dismissal desert from the corps to which he shall belong, or from his post, shall for every such offence be subject to the rules and articles of war, established by the congress of the United States of America, for the better government of the troops in the service of the said United States, which shall be put in execution against the offender by the militia orders and authority, in like manner as the same are put in execution in the army of the said United States against offenders therein, by proper orders and authority thereof; and that in all such cases the governor or commander in chief for the time being, and all militia officers, subordinate to him, shall and may enjoy and exercise all the powers by the said rules and articles of war given to the commander in chief of the army of the United States, and the several officers subordinate to him in the said army — And that upon notice left at the usual place of abode of any offender containing the charge against him and the time and place when and where the court martial will be held for his tryal, and due proof made to such court of the service of such notice, it shall be lawful for such court to proceed to the tryal of such offender, in like manner as if he had appeared and plead not guilty to the charge.—

Pay and rations.

Deserters subject to rules and articles of war.

Upon notice left at residence and proof of service court may try offender.

XIX. That in every case where a fine shall be imposed by a court martial in consequence of the last preceeding clause, it shall and may be lawful for such court martial to direct the offender (in case of the non payment of such fine) to serve in and do duty with any one of the regiments of the army of the United States of America raised by the direction and under the authority of this State, as a private soldier thereof, for and during such time as the court martial shall adjudge not exceeding six months.—

In case of non-payment of fines offenders may be directed to serve as privates

XX. That the commander in chief for the time being shall have power and authority from time to time in his discretion, to order out the whole, or any part of the associated exempts and enrolled militia of this State into actual service, not only for the defence of this State, but to give assistance to any other of the United States, or to reinforce the army of the United States or any part thereof, and to cause each of them to march out of this State for either of the said purposes, and that the associated exempts shall be called out in rotation so as to do their equal proportion of duty with the enrolled militia, as nearly as

Com-mander in chief may order out militia, etc.

may be in the discretion of the commander in chief or brigadier general within whose command the associated exempts do reside;

Term of
service,
etc.

Provided always, that none of the enrolled militia of this State or associated exempts, shall be compelled to do duty out of the same for a greater space of time than forty days at any one time. And provided also that not more than one third part of the militia and associated exempts of this State shall on any occasion or emergency be required or ordered to march out of this State, any thing herein contained to the contrary hereof in any wise notwithstanding.—

Militia
may be
called out
to aid sher-
iff in exe-
cuting pro-
cess.

XXI. That whenever any sheriff his deputy or any other ministerial officer in any of the counties of this State shall receive any legal process commanding him or them to apprehend any person or persons therein charged with any crime or offence against the laws of this State, and such sheriff his deputy or other ministerial officer shall have been forcibly resisted or shall have good grounds to suspect that by force and arms he will be obstructed or resisted in the execution of such process by the said offender or offenders, and his or their aiders and abettors, such sheriff his deputy or other ministerial officer shall represent the circumstances of such resistance or the reason of such his apprehension to the brigadier general or other commanding officer of the militia of the county in which such process is to be served; and if it shall appear to the said brigadier or other commanding officer that there are just grounds for such suspicion, that then and in every such case it shall be lawful for the said brigadier general or other commanding officer to order out such detachment of militia as to him shall appear necessary to aid the said sheriff, his deputy or other ministerial officer to execute such process and which said detachment shall act under the directions and orders of such sheriff, his deputy or other ministerial officer. That such brigadier or other commanding officer shall from time to time report to the commander in chief such application and orders he shall issue in consequence thereof.

Military
courts.

XXII. That for the several purposes aforesaid general, brigade and regimental courts martial, and courts of inquiry shall from time to time as cases may require, be instituted and formed, and general, brigade and regimental orders from time to time given, upon the plan directed by the aforesaid rules and articles of war, and by the officers in rank respectively in the militia equal with those respectively authorized for the purpose by the said articles of war; in respect whereof the governor or commander in chief and all militia officers respectively shall be considered as on the same footing as the general and commander in chief of, and as the officers in their respective ranks belonging to, the army of the said United States.—

Punish-
ment.

Provided always that no commissioned military officer, except when questioned upon the aforesaid rules and articles of war, shall be sentenced or adjudged to any other punishment than to be cashiered and rendered incapable of any military office whatsoever within this State.

Fine in
commuta-
tion of cor-
poral
punish-
ment.

And provided also that it shall and may be lawful for a court martial whenever they shall conceive it proper to fix and determine a fine for which any person adjudged to receive corporal punishment may commute such punishment; and if the same fine shall be paid within the time by the court martial for that purpose limited—the said person shall be accordingly acquitted of such corporal punishment. That all such fines shall be paid into the hands of the president of the said court martial, and shall by him be paid into the hands of the quarter master of the regiment to which the offenders do belong, for the purpose of providing a sufficient quantity of arms and ammunition for the use of the said

regiment agreeable to the directions in the fourteenth clause of this act; and that the overplus be paid by the said quarter master into the treasury of this State.

XXIII. That a roll of the privates of each company shall be made and divided by the commanding officer of the company into eight classes as nearly equal in number to each other as conveniently may be, and a serjeant or corporal shall be allotted on the roll by the commanding officer to each class, which said eight classes in each company shall on detachments, or drafts in pursuance of this act, perform their tour of duty in numerical order; and to ascertain which class shall take the first and which the second tour of duty on detachment, and so on to the eighth class, eight slips of paper numbered respectively from one to eight inclusively shall be so rolled up, or otherwise closed, as to conceal the number, and being put into a hatt and well shook together in the same, the serjeant or corporal of each class shall, in the order to be directed by the commanding officer in behalf of his class, take out one of the ballots, and the number drawn by the serjeants and corporals respectively, shall determine the respective tours of duty of the several classes—The class which draws number one, to have the first tour of duty, and so determining their respective tours of duty in a numerical order throughout all the eight classes, and in the same numerical order shall the eight classes continue their rotation without any new balloting, until the numbers respectively contained in each class shall by the events of war, other accidents become very unequal, when there shall be a new balloting as above directed. That where a company increases by the accession of men from any other parts, or by persons residing within the beat and arriving to the age of sixteen years, the commanding officer of the company shall therewith compleat any classes which may have become deficient; and if a residue remains shall distribute such residue as equally amongst the classes as circumstances will permit—

XXIV. That when and as often as the classes shall be thus fixed, each commanding officer of each company shall form a roll consisting of the eight classes, and containing the names of the men in each class with the names of the serjeant and corporal respectively prefixed to each class, and numbered according to the order of balloting, which he shall keep for his own use guidance and direction, and shall notify each serjeant, corporal and private, to what class he shall belong; and shall return a copy thereof with the list of his commissioned officers prefixed thereto, without delay, to the colonel or commanding officer of the regiment who shall enter all such and every other company return, in a book to be kept by him for the purpose.—

XXV. That the commanding officer of each regiment shall on receipt of all the classed returns of the companies in the regiment, convene together all the commissioned officers in the regiment, and proceed in like manner, to fix by ballot, the respective tours of duty, of all commissioned officers under the rank and degree of a field officer, from and including number one, to and including such number as shall be equal to the number of companies in the regiment, which balloting shall be made separately and severally in the four several lines of office, and be entered by the commanding officer in his said book; as also the quota of each detachment, both as to officers and privates, in order thereby, from time to time to ascertain the rotation of the service of both, which shall ever be determined by such quotas respectively.

XXVI. That if there be two majors belonging to a regiment, they shall decide by lot, which of them shall take the first tour of duty, and the order or tour of duty thereby established shall ever after govern.

Rotation of duty on detachments among field officers. XXVII. That to establish the rotation of duty on detachments among the several field officers in the regiments composing a brigade, the colonels, lieutenant colonels and majors, shall without delay meet together and decide the same by several and separate lots in numerical order as aforesaid, in the several lines of office, which being done, a roll thereof shall be made and subscribed by them all, and returned to the brigadier general of the brigade — The colonels, lieutenant colonels and majors of the regiments not brigaded shall meet and decide the rotation of duty on detachments, the same as the colonels, lieutenant colonels and majors of the brigades are by this act directed.

Brigadier general. XXVIII. That to a brigadier general's command of detachments, the commander in chief shall appoint such brigadier general as shall in his judgment appear most proper for the advancement of the service.

Substitute may be employed. XXIX. That every private shall be allowed to substitute on detachments an able bodied private in his stead who shall nevertheless take his own tour of duty in the order wherein it shall have been fixed as aforesaid — That in case of sickness or by unavoidable accident any officer or private shall be prevented from taking his tour of duty on any detachment, the next to him on the respective rolls of detachments without regard to classes with respect to privates, shall fill his place, and the person so prevented shall in return take the proper next tour of duty on detachment of him so filling his place ; and all classing as aforesaid shall go on in rotation, in the several numerical orders above mentioned, as long and as often as the public service shall require the same.

Tours of duty in case of illness, etc. Provided always, that the commander in chief shall and may from time to time in his discretion order out on detachment as great a part or the whole of any brigade, regiment, troop of horse or associated exempts as he may think proper or the whole militia into actual service: And also that the like discretionary power may on sudden emergencies and without waiting the order of his superior officer be exercised by the commanding officer of any brigade, regiment, troop of horse or company respectively, over each brigade, regiment, troop of horse, or company, giving notice thereof in writing without delay, together with all things relating thereto, as well to his commanding officer as to the commander in chief for the time being. —

Discretionary power to order out troops. XXX. That if the commander in chief of the army of the United States should in the prosecution of the war be under the necessity of calling on this State for an aid of militia for offensive operations within this State, it shall and may be lawful for his excellency the governor or the person administering the government of this State for the time being on every such requisition to detach from the regiments of militia of this State or from such of them as he shall judge proper such and so many officers noncommissioned officers and privates as he shall from time to time deem consistent with the interest and safety of the State, to continue in service for such time as he shall judge proper not exceeding the term of three months from the time they shall arrive at the place of actual service and the same to relieve as occasion may require.

Governor on requisition of commander in chief of U. S. army, may detach troops for offensive operations. XXXI. That all persons under the age of sixty who have held civil or military commissions, and are not or shall not be re-appointed to their respective proper ranks of office, and all other persons between the age of fifty and sixty years who have associated and elected their officers, or shall hereafter associate themselves, shall be exempted from serving as part of the enrolled militia — That all persons who have not yet associated, shall form themselves into voluntary associated regiments or companies according to their number in each respective county and

Exempts from service to enrolled militia.

Voluntary associations to be formed, etc.

recommend their own officers, and that all such associated regiments or companies shall make returns thereof respectively to the commander in chief for the time being without delay, who with the advice and consent of the council of appointment shall issue commissions to them accordingly, in default of which returns they shall respectively do duty in the ranks with the militia of the beat within which they shall respectively reside, until they shall respectively associate as aforesaid — That the substance of such associations shall be, that the associators will severally on all occasions obey the orders of their respective commanding officers, and all others authorized to give them orders by this act, and will in cases of such invasion or incursions of the enemy or insurrections march to repel the enemy or suppress such insurrections in like manner as the enrolled militia are compelled to do; so that they shall not when called out in detachments be annexed to any other regiment or company, or be under the immediate command of any other than their own officers, except as herein after excepted, but be deemed and considered as a separate and distinct corps; and that when such associated exempts shall be called into actual service, they shall be subject to the orders and command of any and every officer of superior rank to such officer of associated exempts.—

Associations to obey orders, etc.

XXXII. That every person an inhabitant of this State subject by this act to military duty in the militia who shall remove out of the limits of the regiment or corps in which he shall be commissioned, associated or enrolled, or sojourn or be within the limits of any other regiment or corps, shall be subject to drafts, and be obliged to do duty in the regiment or corps within the limits of which he shall so happen to be.

Persons subject to draft.

XXXIII. That the lieutenant governor, members of the senate and assembly, the clerks of the senate and assembly, all judicial officers, the secretary of this State, and one of his deputies, the attorney general of this State, the treasurer of this State, the auditor of this State, the clerks of courts of law, the county clerks the clerk of the court of probates all ministers of the gospel, all post masters and post riders, all sheriffs, and one gaoler to every gaol, notwithstanding their being respectively able bodied above sixteen and under sixty years, and all such persons who shall procure special exemptions from the commander in chief of this State for the time being, shall respectively be exempted from training and doing duty in the militia, but shall nevertheless be armed accoutred and provided as by this act is directed — That it shall and may be lawful to and for the commanding officer of every regiment to grant exemptions in writing to such physicians, surgeons, school masters, millers and ferrymen, as he shall in his judgment deem it would be more prejudicial to the common weal to take out with the militia, than to permit them to remain at home; provided no such exemption shall from time to time be given for a longer term than thirty days from the date of the permit.—

Persons exempt from training, etc.

XXXIV. That each male person between the ages of sixteen and sixty years who is or shall be of the people called Quakers, upon producing a certificate from one of their quarterly meetings that he is of the society called Quakers, shall be exempted from all personal military service whatsoever to which he would be subject by this act was he not of the people called Quakers; and for such exemption shall yearly and every year pay the sum of ten pounds in lieu of all military service whatsoever required by this act — And for the purpose of levying the said annual sum, the commanding officer of every beat shall annually in the month of May return to the respective supervisors of the ward, town, manor, precinct or district, wherein he shall reside a list of such Quakers as aforesaid, residing within his beat; and the respective supervisors of

Quakers exempt.

Yearly tax.

How levied and collected.

the county at either of their meetings shall make out a separate tax list thereon (a copy whereof they shall cause to be delivered to the treasurer of the county) with a warrant to be issued by them to the collectors respectively, for levying the same, of the form as near as may be, agreeable to the form of the warrants to collect the taxes for defraying the contingent expences of the county; and in default of goods and chattles of any Quaker, whereon to levy the said sum, the warrant for levying the same shall authorize the collector to commit him to the gaol of the county, and if there shall not be a gaol in the county then to the gaol in an adjoining county—and the keeper of such gaol is hereby required to receive and detain him in safe custody until the said sum shall be paid to the said collector; and the said collectors shall respectively pay the monies they shall so from time to time collect into the county treasury, from whence they shall be paid by the several county treasurers into the treasury of this State, for which collection the collector shall be allowed the like poundage as for collecting the contingent charges of the county.

Act not to
affect per-
sons who
have fur-
nished sub-
stitutes.

XXXV. That this act or any thing in the same contained shall not in cases of drafts or detachments of the militia affect any person who has furnished heretofore, a sufficient able bodied man for service in one of the regiments raised under the direction of this State, unless the time of such service shall have expired.—

Verbal
notice
sufficient.

XXXVI. That in all cases where notice is required by this act, verbal notice to the party himself or left at his usual place of abode with a person of the years of discretion by any commissioned officer or non-commissioned officer of the company, shall be deemed a legal and sufficient notice.—

Compensa-
tion of offi-
cers at-
tending
courts
martial.

XXXVII. *And be it enacted by the authority aforesaid,* That the officers attending general or regimental courts martial by virtue of this act shall for every day they shall respectively serve on the said courts be paid the sum of six shillings, (which said sum of six shillings per day, shall be in full of all pay and subsistence for such service,) out of the fines to be imposed by the said courts, to be ascertained by the respec-

Fines, how
recovered.

tive presidents of the said courts—That the fines imposed by the said courts shall be recovered by warrant, under the hand of the commanding officer of the regiment, directed to any serjeant or serjeants of the regiment by distress and sale of the goods and chattles of the offender, and for want thereof the offender shall be committed to the gaol of the county, and if there shall not be a common gaol in the county then to the gaol in an adjoining county; and the keeper of such gaol is hereby required to receive and detain him in safe and close custody until the said fine shall be paid, or until the time of his confinement expires agreeable to the said warrant—That out of the said fines when recovered the commanding officer of the regiment shall pay the said officers of his said regiment attending on the said courts, and the overplus money of the said fines shall by the said commanding officer be paid into the treasury of this State.—

Officers to
be paid
from
monies re-
ceived
from fines.

Reimburse-
ment of
monies
paid out
by officers.

XXXVIII. *And whereas* the commanding officers of brigades and regiments are frequently on extraordinary emergencies obliged to disburse of their own monies for paying expresses; for reimbursement whereof, the treasurer of this State, shall and is hereby required from time to time to repay the same out of any monies in the treasury not by law otherwise particularly appropriated provided that the accounts thereof respectively shall be first sworn to before a justice of the peace of any county within this State.—

XXXIX. *And be it further enacted by the authority aforesaid,* That the commanding officer of a regiment of the militia of this State, by draft in writing on the said commissioner, in favor of the quarter master of the regiment with a warrant endorsed by the person administering the government of this State for the time being, furnish him with such quantities, either of loose ammunition or made up in cartridges as shall be directed by such warrant; the said quarter master paying for the same the first cost thereof and the expence of making up the same; which monies the said commissioner shall from time to time lay out in the purchase of ammunition.—

Ammunition to be furnished on requisition.

XL. *And be it further enacted by the authority aforesaid,* That if any person be wounded or disabled, upon assisting in repelling any invasion or incursion of the enemy, or suppressing an insurrection, or in any other legal military service, he shall be subsisted and provided for at the expence of the State, during such disability, except such persons whose cases are already provided for by the several acts of Congress of the United States of America, making provision for persons that may become disabled while in the service of the United States. That each person who hath been or shall hereafter be so wounded or disabled, and whose cases shall not be provided for as aforesaid, shall be entitled to such partial or permanent allowance, as shall be adjudged by the field officers of the regiment (not exceeding the allowances granted by the acts of congress aforesaid) and which adjudication, being confirmed by the commander in chief for the time being, he shall thereupon issue duplicate warrants under the privy seal of this State, upon the treasury, for the payment of the sum or sums so to be adjudged to the person so wounded or disabled, and the treasurer upon being served with one of the said duplicates; shall out of any monies which may then be in the treasury, pay to the several persons in whose favor such warrants shall be issued the sum or sums therein respectively specified, and in such manner as shall be directed by the said warrants respectively.

Wounded persons to be subsisted, etc.

XLI. *And be it further enacted by the authority aforesaid,* That proceedings or trials at courts martial directed by this law, may be carried on at any time or times, the seventh article of the fourteenth section of the said articles of war, whereby such proceedings or trials are prohibited from being carried on, except between the hours of eight in the morning and three in the afternoon, to the contrary notwithstanding.—

Proceedings of court martials. When carried on.

XLII. That the commanding officers of the several companies, shall cause the said articles of war to be read and published at least twice in every year, at the head of their respective companies.—

Articles of war to be read.

And whereas in many instances the militia of this State have been necessitated for the want of provisions in the public stores to subsist themselves at their own expence when ordered out to repel the enemy,

And whereas it may become necessary for the militia in future to furnish themselves with provisions on similar occasions.—

XLIII. *Be it therefore enacted by the authority aforesaid,* That the commanding officers of companies which shall so have furnished themselves and their companies, or shall hereafter furnish themselves and their companies with provisions at their own expence, shall from time to time return to the commanding officer of the regiment or corps, duplicate subsistence rolls containing the names of the several persons of their respective companies who have, or hereafter shall furnish themselves with provisions at their own expence and the number of days for which each person shall have so furnished himself, and which duplicate subsistence rolls, the said commanding officers of companies shall respect-

Officers furnishing themselves or their companies with subsistence to make and return subsistence rolls, etc.

ively subscribe, and swear to the same before the said commanding officer, who is hereby authorized to administer an oath for the purpose, and such commanding officer of the regiment shall thereupon make an abstract of the subsistence rolls of the respective companies of such regiment, and return duplicates of the same, together with one of such subsistence rolls to the auditor, who is hereby required to audit such abstracts, and to make a reasonable allowance for such provisions furnished as aforesaid, and to return one of the said abstracts audited as aforesaid to the said commanding officer of the regiment; and to charge the amount of such abstracts to the account of the United States.—

Only one ration per day allowed. Proviso as to notifying associate exempts.

Provided always, that no person shall be allowed more than one ration per day in such subsistence rolls.

And whereas the dispersed situation of the places of residence of the associate exempts renders the mode at present used for notifying them to march in cases of invasions or insurrections extremely inconvenient, and in a great measure defeats the objects for which they were embodied.

Notice how given.

XLIV. *Be it therefore enacted by the authority aforesaid*, That it shall and may be lawful to and for the commanding officers of the regiments of enrolled militia, when and as often as their whole regiments shall be ordered out for duty, to notify the senior officers of such associated exempts residing within the limits of their regiments respectively, to order the commissioned officers of such exempts as may reside therein, to appear at the time and places appointed for the rendezvous of such regiments respectively, and that it shall and may be lawful, to and for any commissioned or non-commissioned officer of such regiments or company of enrolled militia as shall be ordered out to oppose the enemy or insurgents, to notify and warn the non-commissioned officers and privates of such corps of exempts residing within their respective limits or beats to march to such place, and at such time as the enrolled militia of such regiment or company are ordered to march.—That until such time as such associated exempts shall be joined by an officer of the corps in which they are associated, they shall march do duty with, be annexed to, and be subject to the immediate command of the officer, commanding such regiment or company of enrolled militia within the limits or beat of which they respectively reside, and that the said officers, non-commissioned officers and privates of such associated exempts shall be subject to the same pains and penalties for neglecting or refusing to march after being notified as aforesaid, as the enrolled militia are subject to by this act, for neglecting or refusing to march.—

To do duty with and be subject to orders of commanding officers of regiments until joined by an officer of the corps.

Proviso as to expense of conviction of delinquents.

And whereas the conviction of delinquents for refusing to rendezvous and march when duly notified and ordered, hath heretofore been attended with much expence and delay; and proper encouragement hath not been given to such as have evinced their zeal and alacrity to rendezvous and march to repel an enemy, or subdue insurgents;

Proceedings in case persons enrolled in the militia refuse to rendezvous and march when duly notified to do so.

XLV. *Be it therefore enacted by the authority aforesaid*, That every person enrolled in the militia of this State, who shall refuse or neglect to rendezvous and march with the regiment or detachment thereof when duly notified so to do; and every person belonging to the associated exempts who shall refuse or neglect to rendezvous and march when duly notified so to do, when the whole regiment in the limits whereof he resides is ordered to march, such delinquent shall be dealt with in the manner following viz^t. The commanding officer of every company in the enrolled militia shall and is he hereby strictly enjoined and required, within six days next after the return of the regiment or any detachment thereof from a tour of duty, to make and transmit to

the commanding officer of the regiment a return, containing the names of every person who had rendezvoused and marched out at the time and place directed by the order, and also of all such persons, if any, who did not rendezvous at the said time and place, including the names of the associate exempts residing within the limits or beat of the company, if the order was for the whole regiment and associate exempts to march; and shall also therewith transmit the names of the officers and non-commissioned officers by whom each delinquent was notified to march, if such notice was given, the day on which they were ordered to rendezvous, and the day when discharged from the service for which the regiment, company or detachment was ordered out, and shall certify such return to be true and impartial according to the best of his knowledge and belief—That the commanding officer of every shall and he is hereby required and strictly enjoined, within twenty days next after the return of the regiment or detachment from every such duty in the field, by regimental orders to appoint a day not less than five nor more than ten from the date of the order, for as many times three officers to convene (at a place within the limits of the regiment, to be specified in such order) as there are tens in the number of delinquents returned to him; which officers shall be named by the said commanding officer of the regiment, and be composed of officers from the enrolled militia and from the associate exempts, if there are such officers of associate exempts within the limits of the regiment; and in case there are not more than nine delinquents, then the commanding officer shall appoint one court martial to consist of not more than five commissioned officers nor less than three; and being more than nine and less than twenty, he shall then appoint two such courts martial, at which time and place the adjutant of the regiment shall attend, and the name of each officer convened being written on a piece of paper, the whole shall be put into a hatt, and the adjutant shall in the presence of the officers draw them out, and enter them on a sheet of paper in the order in which they shall be drawn—That the three first drawn shall compose one court martial, three next shall compose another court martial, and so on by threes to the number convened.

Provided always if there shall be more than seventy delinquents returned, there shall be as many officers ordered to convene as will constitute seven such courts martial, and the limits of the regiment shall be divided in manner aforesaid into as many parts as there shall be courts formed out of the officers which shall actually convene. That where within the limits of any regiment there are not a sufficient number of officers to constitute so many courts as by this proviso are required, as many officers shall be ordered to convene as will constitute the greatest number of such courts the regiment is capable of, and the limits of the regiment shall accordingly be divided into parts equal to the number of such courts—That the senior officer of each three shall be president of the court, that the presidents shall then divide the limits of the regiment into districts by limits or beats of companies, in each of which a court martial shall convene for the trial of all the delinquents therein, and shall determine by ballot in what district each court martial shall sit—That the president of each court shall then immediately in writing signify to the adjutant of the regiment in what district the court of which he is president is to convene, and on what day, provided such day shall not be less than five days after, and exclusive of the day on which such notice is given—That the adjutant shall thereupon transmit such notice to the commanding officer of each company in such district, who is hereby required, to order notice to be given to every delinquent by him returned, and to every officer and non-commissioned officer by whom

Proviso as to number of delinquents and of courts martial.

President of court to notify adjutant, &c.

any delinquent was notified to rendezvous and march as aforesaid, to attend the court martial in the district to which it belongs, to take trial or give evidence—And all persons returned as delinquents, who may by sickness or necessary absence out of the district be prevented from attending, may send a person to state his case to the court martial, which court shall try every person returned as delinquent, whether such person attends or not—That when the officers are so convened as aforesaid, and before they separate, the adjutant, shall and he is hereby authorized and empowered to administer the following oath, to each of the officers composing a court martial.

Officers of
court to
take oath.

Form of.

You do solemnly and sincerely swear, that you will well and truly try and true presentment make according to evidence whether any of the persons triable by the court of which you are (president or member) are delinquent or not. If you find any not delinquent because not duly notified, you shall so say: If you find any not delinquent by reason of sickness, or such other reasonable cause or impediment as you shall deem good and sufficient, you shall so say. If you find any not delinquent because the person or persons charged with delinquency did actually rendezvous and march and did not desert, you shall so say: If you find that any person or persons being duly notified did not rendezvous or rendezvousing did refuse or neglect to march, you shall so say: If you find that any person did not rendezvous and march at the time and place appointed, and was sick, or had other reasonable cause or impediment as aforesaid for not rendezvousing and marching, being duly notified, you shall enquire how long such sickness, reasonable cause or impediment existed, and whether such person did afterwards march, and when, and whether he deserted or not, and shall so say.—So help you God.

Power to
send for
witnesses;
sentences,
etc.

That every such court may send for such witnesses as they may deem necessary on any trial—That the president of each court shall subscribe the sentence or sentences given by such court—That the president shall transmit a duplicate of the sentence or sentences so subscribed as aforesaid, to the commanding officer of the regiment within five days next after all the delinquents shall be tried, and the sentences given—That every person convicted by the said courts martial or any of them, of not rendezvousing being duly notified, or if rendezvousing, of neglecting, or refusing to march, or of not marching after any sickness, reasonable cause or other impediment (which might have prevented his rendezvousing and marching as by the order he was to have done) had subsided, or of having deserted after having marched, not having before been punished for the same desertion; each and every such person (not a deserter) shall be fined in the sum of forty shillings for every day of the first three days, and the sum of eight shillings for every day after, and which shall have intervened from the third day after the day on which the regiment or detachment was ordered to rendezvous, to the day on which the same was discharged, and for so many days more as would have intervened between the day of discharge and return to their respective limits or beats, computing at the rate of twenty miles for every day, from the place where discharged to the residence of the commanding officer of the regiment; or if the offender shall have deserted, the like fines to be imposed from the time of such desertion; all which fines shall be levied by distress and sale of the offenders goods and chattles by warrants under the hand of the commanding officer of the regiment, directed to one of the serjeants of the company or beat to which such offender does belong, or in which such offender resides, together with the costs and charges of such distress as is usual in civil actions on warrants by a justice of

Fine.

How levied
and collected.

the peace, and for want of such goods and chattles the offender and offenders shall be committed to the common gaol of the county; and if there shall not be a common gaol in the county, then to the gaol in an adjoining county, and the keeper of such gaol is hereby required to receive such offender or offenders, and him or them to keep in close gaol agreeable to such warrant, there to remain as many days as there are shillings in the fine imposed on him, unless he shall sooner discharge said fine.—That every officer and non-commissioned officer who shall neglect or refuse the duties enjoined him by this clause, shall be tried by a brigade court martial, and being convicted shall and may be cashiered and fined, or cashiered only, or fined only in the discretion of the court-martial.

Officers
may be
cashiered.

XLVI. That it shall and may be lawfull to and for the commanding officer of the regiment to pay out of any monies arising by the fines to be inflicted by virtue of this clause, to each of the officers serving on the courts martial and to the adjutant at the rate of six shillings per day, for every day such officers and adjutant have been *bona fide* employed in discharge of the duty required of them by this clause.—That every witness attending any court martial to be instituted by virtue of this act, or who shall be sent for by such court as necessary to convict an offender, shall be allowed at the rate of three shillings per day if such witness should reside more than one mile from the place where such court shall be convened for every day's attendance, untill dismissed by the court, and the certificates of the presidents of any such court's martial, shall be sufficient vouchers to the commanding officer of the regiment to pay the witnesses, which he is hereby required to do out of the fines arising by virtue of this act.—That the residue of such fines arising from delinquency for not rendezvousing and marching when ordered by detachment, shall by the commanding officers of regiments, and the commanding officers of companies be divided amongst the enrolled non-commissioned officers and privates of such detachment who did actually march, and according to the time they respectively served on such detachment, and be paid by the said commanding officer of the regiment to the commanding officer of the company who shall pay the same to the persons entitled thereto; and that the residue of such fines arising from delinquencies for not rendezvousing and marching when the whole regiment and the associate exempts are called out, shall be divided and paid in like manner amongst the non-commissioned officers and privates of the regiment and of the associate exempts within the limits thereof, who did actually march, and in proportion to the times they respectively served on such duty — That in case of the death, sickness or absence of the adjutant the duty enjoined him by this clause shall and may be executed by any person thereunto appointed in writing, signed by the commanding officer of the regiment; and in case of the death, sickness or other inability of the president or members of any of the said courts, the commanding officer of the regiment shall appoint a substitute out of the other commissioned officers of the regiment.—

Officers
serving on
courts to
be paid out
of fines.

Witnesses'
fees.

Residue of
fines to be
divided
among
men who
actually
march.

Duties of
adjutant,
by whom
executed
in case of
illness,
etc.

And whereas many persons in the enrolled militia of this State have heretofore neglected or refused to march when called out on detachment, or with the regiments to which they respectively belong and have not been tried for the same, on account whereof great uneasiness prevails

XLVII. *Be it further enacted by the authority aforesaid,* That all persons who have since the eleventh day of March one thousand seven hundred and eighty, neglected or refused to march having been duly notified, and who have not been tried for such offence, shall and may be

Persons
neglecting
to march
to be tried,
etc.

reported to the commanding officers of the regiments respectively within this State, and be tried by a court, or courts martial, to be instituted agreeable to the manner directed in the next preceeding clause of this act, and shall be punished or fined, and the fines recovered in like manner as they were punishable and finable, and the fines recoverable by "An act for regulating the militia of this State of New-York," passed March eleventh one thousand seven hundred and eighty, as if the same was now in full force; and the commanding officer of every regiment, and the commanding officer of every company and corps of associate exempts are hereby strictly enjoined and required to do what by the said clause they are enjoined to do to bring such delinquents to trial and punishment as though such delinquents had offended after the passing of this act. That the residue of all such fines, after the president and members of the court martial, the adjutant and witnesses shall have been paid, as by the next preceeding clause of this act is directed, shall be disposed of as in and by the said act passed the eleventh day of March one thousand seven hundred and eighty is directed.

Trials to
be com-
pleted.

XLVIII. *And be it further enacted by the authority aforesaid* That all and every court martial within this State instituted for the trial of offenders, and which has actually began to try an offender, shall and may complete such trial and carry the same into effect as far as it is incumbent on the said court to do, and the commander in chief and the brigadiers general shall and may proceed to carry into execution the sentence of any court martial if approved, in as ample and full a manner as if the said act passed the eleventh day of March one thousand seven hundred and eighty, was in full force. That in case of distresses for levying any fine imposed by this act, the arms ammunition and accoutrements of the convicted delinquent shall not be taken, any thing in this act to the contrary notwithstanding.

When act
to take
effect.

XLIX. *And be it further enacted by the authority aforesaid* That this act shall not take effect until the first day of June next and that the said act entitled "An act for regulating the militia of the State of New York," passed the eleventh day of March one thousand seven hundred and eighty be and is hereby revived and shall be in full force until the said first day of June next, and no longer.

CHAP. 28.

AN ACT to liquidate the depreciation of the pay of the officers of the military hospital and medical department, and of the officers and privates of the levies and militia of this State made prisoners by the enemy.

PASSED the 6th of April, 1782.

Preamble. WHEREAS congress did by their act of the thirteenth day of June one thousand seven hundred and eighty one recommend to the several States in the words following, to wit.

Resolution of congress recited. Resolved That it be and it is hereby recommended to the several States to which the officers of the hospital and medical department now in service respectively belong or of which they were inhabitants to settle the accounts of the said officers for depreciation on the principles established by a resolution of congress of the tenth of April, one thousand seven hundred and eighty and to make provision for